

\$~21 (2021)

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

%

Date of Decision: 28.09.2021

+ **LPA 353/2021**

DELHI PARSHASHAN VIKAS VIBHAG
INDUSTRIAL EMPLOYEES UNION

..... Appellant

Through: Ms. Meghna De, Adv.

versus

CHIEF ELECTORAL OFFICER & ANR.

..... Respondents

Through: Mr. Rishikesh Kumar, ASC for
R-1/GNCTD.

Mr. Sushil Kumar Pandey, Adv. for
R-2/UOI.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MR. JUSTICE TALWANT SINGH

[Court hearing convened *via* video-conferencing on account of COVID-19]

RAJIV SHAKDHER, J. (Oral):

CM No.33979/2021

1. Allowed, subject to just exceptions.

LPA No.353/2021

CM No.33977/2021[Application filed on behalf of the appellant-union for
interim relief]

CM No.33978/2021[Application filed on behalf of the appellant-union for
taking additional documents on record]

2. Issue notice.

2.1. Mr. Rishikesh Kumar accepts notice on behalf of respondent no.1
while Mr. Sushil Kumar Pandey accepts notice on behalf of respondent no.2.

3. With the consent of the counsel for the parties, the appeal is taken up
for hearing and final disposal.

4. This appeal is directed against the order dated 17.9.2021, passed by the learned single judge in W.P.(C.) 10431/2021.

4.1. The appellant-union is aggrieved by the order of the learned single judge to the extent that, no direction has been issued qua the members of the appellant-union, which would protect them from coercive action during the pendency of the industrial dispute. In support of its case, the appellant-union had relied upon the provisions contained in Section 33 of the Industrial Disputes Act, 1947 [hereafter referred to as “1947 Act”].

5. Counsel for the appellant-union and respondent no.1 do not dispute the fact that, the conciliation proceedings are pending before Conciliation Officer/respondent no.2.

5.1. It appears that, the appellant-union had approached Conciliation Officer/respondent no.2 on behalf of their members for grant of regularization and for being paid “equal pay for equal work”.

6. The members of the appellant-union have been engaged, from time - to-time for a block period of 89 days, at one stretch, followed by a break. This process has, concededly, continued for quite some time.

6.1 To be noted, the appellant-union, at the moment, represents 13 persons.

7. Ms. Meghna De, who appears for the appellant-union, in support of her plea, has relied upon Annexures "P-4" and "A-3".

7.1. A perusal of the aforesaid documents, *prima facie*, seems to establish that, the members of the appellant-union are engaged for 89 days, followed by a break, as noticed above, only to be engaged thereafter for another 89 days.

7.2. The record also shows that, some of the members of the appellant-union have continued to be engaged in this manner since 2008. There are others, who were engaged in 2013, 2014, 2015 and 2016; while some members have been engaged in more recent time.

8. Mr. Kumar says that, the persons, who are before the Conciliation Officer i.e., Conciliation Officer/respondent no.2, are not workmen, and that they are civil defence volunteers.

9. Therefore, according to Mr. Kumar, an issue has been raised, as regards the appellant-union triggering the jurisdiction of the Conciliation Officer/respondent no.2 under the 1947 Act.

9.1. Besides this, Mr. Kumar says that, there is also an issue, concerning the territorial jurisdiction which requires examination.

9.2. According to us, these are the matters, which would have to be addressed by the appropriate forum.

10. Since conciliation proceedings are on, we have asked Mr. Kumar as to whether respondent no.1 intends to disengage the members, who are presently represented by the appellant-union.

10.1. Mr. Kumar, on instructions, says that, pending resolution of the industrial dispute, the disengagement of the members of the appellant-union, who are currently before this Court, will not be carried out. In other words, status quo with regard to engagement would continue, till the industrial dispute is resolved, one way or the other.

11. Thus, having regard to the statement made by Mr. Kumar, the instant appeal is disposed of with the following directions:

(i) The Conciliation Officer/respondent no.2 will endeavour to dispose of the matter at the earliest, though not later than 31.12.2021.

(ii) In case, there is no resolution/settlement, arrived at between the parties, the appellant-union will be at liberty to take recourse to an appropriate remedy, as provided in law.

(iii) The status quo with regard to the engagement, as regard members of the appellant-union, who are presently before us, would continue, till the industrial dispute is resolved.

(iv) In case, the issue with regard to the jurisdiction is pressed by respondent no.1, the appropriate forum will decide the same, after hearing the contesting parties.

11.1. Needless to add that, the merits of the case will not be impacted by the directions issued by us hereinabove. The above directions have been issued only to maintain status quo, during the pendency of the industrial dispute.

12. Resultantly, the impugned order is set aside.

13. Consequently, pending applications shall also stand closed.

RAJIV SHAKDHER, J.

TALWANT SINGH, J.

SEPTEMBER 28, 2021/pmc

[Click here to check corrigendum, if any](#)